

*Original*

# FEDERAL COMMUNICATIONS COMMISSION

In Re Applications of: )  
CHAMELEON RADIO CORPORATION )  
Re Issuance of an Order to )  
Show Cause Why the License )  
of Station KFCC-AM, Bay )  
City, Texas, Should Not )  
Be Revoked, and )  
Request for Extension of )  
Special Temporary Authority )

MM DOCKET No.: 96-173

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*Brian A. Bradshaw*

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## HERITAGE REPORTING CORPORATION

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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Courtroom No. 3  
FCC Building  
2000 L Street, N.W.  
Washington, D.C.

Tuesday,  
October 8, 1996

The parties met, pursuant to the notice of the  
Judge, at 9:30 a.m.

BEFORE: HON. CHACHKIN  
Administrative Law Judge

APPEARANCES:

On Behalf of Chameleon Radio Corporation:

GENE A. BECHTEL, ESQ.  
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APPEARANCES: (Continued)

On Behalf of the Mass Media Bureau:

ALAN E. ARONOWITZ, ESQ.  
Enforcement Division  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street, Northwest  
Washington, D.C. 20554  
(202) 418-1430

I N D E X

WITNESSES:                      DIRECT   CROSS   REDIRECT   RECROSS   VOIR DIRE

(None)

E X H I B I T S

IDENTIFIED                      RECEIVED                      REJECTED

(None)

Hearing Began: 9:30 a.m.

Hearing Ended: 9:50 a.m.

P R O C E E D I N G S

JUDGE CHACHKIN: Let's go on the record.

This proceeding concerns an issuance of an order to show cause to Chameleon Radio Corporation, why the license of KFCC-AM, Bay City, Texas, should not be revoked, and also Bay City Chameleon's request for extension of special temporary authority.

May I have the appearance on behalf of the parties. On behalf of Chameleon Radio Corporation?

MR. BECHTEL: Gene Bechtel, of the firm of Bechtel & Cole.

JUDGE CHACHKIN: And on behalf of the Chief, Mass Media Bureau?

MR. ARONOWITZ: Alan Aronowitz.

JUDGE CHACHKIN: Okay. Are there preliminary matters the parties wish to discuss concerning the designation order itself?

MR. ARONOWITZ: No, Your Honor.

JUDGE CHACHKIN: I want to make sure my understanding is correct. The Commission has a provision here dealing with paragraph 29, dealing with the possible notice of apparent liability and a forfeiture. And as I read it, it seems to me pretty clear, but I just want to make sure that the parties have the same understanding. As I read it, this forfeiture provision only comes into effect

1 if the determination is made that the record does not  
2 require the revocation of the license.

3 In other words, if the license -- if the  
4 determination is made that the license should be revoked,  
5 then we don't get to the next question of willfulness or  
6 repeated misrepresentation and the forfeiture provision.  
7 It's only if the determination is made that revocation is  
8 not justified that we get to that provision. It seems  
9 pretty clear that's what it says here.

10 But does anyone have any questions about it? Any  
11 different views?

12 MR. BECHTEL: I have none, sir.

13 JUDGE CHACHKIN: Pardon me?

14 MR. BECHTEL: I have none, sir.

15 JUDGE CHACHKIN: You read it the same way?

16 MR. BECHTEL: I read it the same way.

17 JUDGE CHACHKIN: What about you, Mr. Aronowitz?

18 MR. ARONOWITZ: That's what it says.

19 JUDGE CHACHKIN: All right.

20 So what it says here, Mr. Aronowitz, basically,  
21 the burden is on you, if you wish to -- well, that's up to  
22 you in proceeding in the case, whether you want to make a  
23 showing of willfulness or repeated misrepresentations. The  
24 added burden on you in the event revocation is not  
25 warranted.

1           What I am saying is that is different than the  
2 issues dealing with revocation. There is no requirement  
3 under the issues and you meeting your burden to establish  
4 that misrepresentations were willful or repeated. It's only  
5 if you want to justify a forfeiture that you would have to  
6 make that showing.

7           As far as the issues are concerned, the  
8 designation order, I assume the parties have no questions,  
9 don't need any clarification; is that correct?

10           MR. BECHTEL: That's correct, sir.

11           JUDGE CHACHKIN: And that's your view too?

12           MR. ARONOWITZ: Yes, sir.

13           JUDGE CHACHKIN: All right. So the only other  
14 remaining matter to take up then is the scheduling of  
15 procedural dates.

16           And while we were off the record we had some  
17 preliminary discussions concerning certain procedural dates.  
18 And it was agreed that documents would be produced by  
19 October 22, relevant documents would be produced by October  
20 22, and also on that date both parties would identify  
21 persons with relevant evidence.

22           It was further agreed that discovery would be  
23 completed by December 2, 1996. That is the extent of the  
24 agreements reached by the parties.

25           Mr. Bechtel indicated that he would make his

1 witnesses, namely, Fred Lundgren, Don Werlinger, and Jo Nell  
2 Werlinger, if the Bureau wanted to depose them, available  
3 without the need of the 21-day notice or a formal notice to  
4 take depositions.

5 Is that correct?

6 MR. BECHTEL: That is correct, sir.

7 JUDGE CHACHKIN: And, Mr. Aronowitz, I -- well, we  
8 don't know who Mr. Bechtel wants for witnesses, and we don't  
9 know -- for you to identify. Of course, there are certain  
10 witnesses listed in the designation order.

11 Now, whether there are any other witnesses, that's  
12 another question. I guess Mr. Bechtel will have to wait  
13 until October 22, unless you want to provide the names  
14 earlier, if there are any other witnesses other than the  
15 ones listed in the designation order.

16 Now, in terms of -- hopefully the parties will be  
17 able to proceed with depositions without the need of a  
18 formal notice to take depositions. And apparently in the  
19 case of Mr. Bechtel's witnesses, that won't be necessary.

20 Mr. Aronowitz, I don't know what your position is.  
21 Will you -- we are talking now about non-Commission employee  
22 witnesses. Will there be a need to issue a formal notice or  
23 not? And that depends, of course, on -- you have no control  
24 over these witnesses, whether or not they are going to  
25 require 21-day notice, or whether or not they would be



1 willing to be deposed without such notice, but that is  
2 something you two get together with your witnesses and see  
3 what their feelings are.

4 Well, all I can say is I have to leave the parties  
5 further discussion, whether Mr. Bechtel has to file a formal  
6 notice to take depositions when he gets the list of persons  
7 with relevant evidence.

8 All right, now, as far as -- we have got a date  
9 for discovery. Now, Mr. Bechtel, as I read the rules  
10 insofar as Commission employees, unless you can establish  
11 extraordinary circumstances and press and indicates what  
12 that is, you are limited insofar as Commission employees to  
13 taking their interrogatories.

14 And, again, you can discuss with the Bureau  
15 whether or not they are willing to turn over to you --  
16 obviously it would expedite things -- turn over to you  
17 copies of any statements that these Commission employees  
18 have provided, any reports that they have. But that, again,  
19 is something for you to work out. If you need my help, I  
20 will be glad to make a ruling, if necessary. But hopefully,  
21 to the extent possible, the parties can agree on these  
22 things on a cooperative basis.

23 Now, insofar as the hearing date, I have indicated  
24 off the record that we are going to proceed to hearing on  
25 January 14 will be the hearing date. Now, the question is

1 other dates.

2 Obviously, a week before January 14 would be New  
3 Year's Day or something similar to that, so I am not going  
4 to require parties to exchange exhibits then. And we will  
5 use three weeks before January 14 for exchange date,  
6 whatever that day is.

7 MR. ARONOWITZ: December 24.

8 MR. BECHTEL: Bingo.

9 MR. ARONOWITZ: Is that the way I calculate it?

10 JUDGE CHACHKIN: If that's satisfactory to the  
11 parties, or we can -- well, is that satisfactory to the  
12 parties?

13 MR. ARONOWITZ: That's fine with me.

14 JUDGE CHACHKIN: December 24?

15 MR. BECHTEL: Sure.

16 JUDGE CHACHKIN: All right.

17 MR. ARONOWITZ: It should be fine.

18 JUDGE CHACHKIN: Well, you don't have to exchange  
19 it then. You can exchange it earlier.

20 MR. BECHTEL: Sure.

21 MR. ARONOWITZ: I would like to think that if it  
22 comes down to the crunch, we can work something out.

23 JUDGE CHACHKIN: Yes, it doesn't seem to me that  
24 we are dealing here with too many documents. The issues are  
25 relatively simple, it seems to me.

1 All right, we will set December 24 as the exchange  
2 of exhibits. And on that date the parties will identify the  
3 witnesses who they intend to call to present oral testimony,  
4 and provide a brief statement as to the nature of their  
5 testimony.

6 In the case of persons who are intending to  
7 provide oral testimony there is no need to notice them for  
8 cross-examination. And as far as notification for witnesses  
9 for cross-examination, we will set January 7 for that date.

10 MR. ARONOWITZ: Excuse me, Your Honor. January 7?

11 JUDGE CHACHKIN: Yes.

12 And in the case of the December 24 date, expect  
13 the parties to either hand-deliver the exhibits or make sure  
14 that they get there by December 24, no later than December  
15 24. But since both parties are close to each other's  
16 offices, it should not be difficult to hand-deliver them.

17 And the same with the notice -- as far as the  
18 notification of witnesses for cross-examination, that could  
19 be faxed to each party, so if you don't have Mr. Bechtel's  
20 fax number, you can obtain it, or hand-deliver it, whatever  
21 you wish. And the same if you -- you can also fax it to me.  
22 I will get my fax. Call my secretary to get the fax number.

23 Mr. Bechtel, that is as far as notification of  
24 witnesses. I would expect also to get the exhibits hand-  
25 delivered.

1 And the hearing to commence on January 14, 1997,  
2 at 10:00, in the Commission's Washington, D.C. offices, and  
3 subsequent dates we will probably start at 9:00 or 9:30.  
4 The first date we will start at 10:00 a.m.

5 Now, is there anything else as far as discovery or  
6 hearing date or anything that the parties want to take up at  
7 this time?

8 MR. BECHTEL: No.

9 JUDGE CHACHKIN: Does any party intend to use  
10 admissions, request for admissions in this case?

11 MR. ARONOWITZ: We are planning on it, Your Honor.

12 JUDGE CHACHKIN: When do you intend to file  
13 request for admissions?

14 MR. ARONOWITZ: As I am calculating it, Monday,  
15 the 21st of October.

16 MR. BECHTEL: That's fine with us, Your Honor.

17 JUDGE CHACHKIN: All right.

18 MR. BECHTEL: I would just also add that we have  
19 in mind joining in stipulations or through the admissions  
20 process, and covering as many of the facts as we can.

21 MR. ARONOWITZ: And that's our intention, Your  
22 Honor, to facilitate those types of stipulations of  
23 admissions, so that we can move to the meat of the matter.

24 JUDGE CHACHKIN: All right. So I understand, the  
25 parties are going to get together and discuss the questions

1 we talked about today about expediting discovery, and  
2 stipulations. Have the parties agreed on a meeting place to  
3 talk about it?

4 MR. ARONOWITZ: Not yet, Your Honor.

5 JUDGE CHACHKIN: And also there should be some  
6 discussion as to the place where these depositions are going  
7 to be taken.

8 MR. ARONOWITZ: Okay.

9 JUDGE CHACHKIN: Now, insofar as -- the only other  
10 thing I could see is the question of interrogatories to  
11 Commission employees.

12 Mr. Bechtel, when do you expect to get them out?

13 I assume you -- you already know the names, I think.

14 Doesn't the designation order list the names of Commission  
15 employees who conducted an inspection?

16 Well, you can wait if you want to.

17 MR. BECHTEL: I guess I need to wait until after  
18 October 22 for the final -- if there are any additional  
19 ones. The ones that are in the hearing order, I can do that  
20 by October 21.

21 JUDGE CHACHKIN: All right. I would doubt that  
22 there would be anybody else because no one else is mentioned  
23 in the designation order.

24 MR. BECHTEL: I would be surprised.

25 JUDGE CHACHKIN: So you will do that by October

1 21?

2 MR. BECHTEL: Yes, Your Honor.

3 JUDGE CHACHKIN: All right. It looks like we will  
4 be able to move this thing along pretty quickly.

5 All right, so the key dates are October 21, for  
6 interrogatories to commission witnesses; October 22, for  
7 production of documents and identification of persons with  
8 relevant evidence; December 2, for completion of discovery;  
9 December 24, for exchange of exhibits and identification of  
10 persons who are going to provide oral testimony;  
11 notification of witnesses is scheduled for January 7, 1997;  
12 and the hearing is scheduled for January 14, 1997. I should  
13 also indicate that on October 21 the request for admissions  
14 will be filed.

15 All right, gentlemen, anything else?

16 If not, then we are in recess.

17 Again, if you need me for anything, if there is  
18 any problems with discovery, moving things along, I am  
19 always available.

20 MR. ARONOWITZ: Thank you, Your Honor.

21 (Whereupon, at 9:50 a.m., the hearing was  
22 recessed, to resume at 10:00 a.m., Tuesday, January 14,  
23 1997.)

24 //

25 //

**REPORTER'S CERTIFICATE**

FCC DOCKET NO.: 96-173

CASE TITLE: Chameleon Radio Corporation

HEARING DATE: October 8, 1996

LOCATION: Washington, D. C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date: 10.8.96

Timothy McMullen  
Official Reporter  
Heritage Reporting Corporation  
1220 "L" Street, N.W.  
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Timothy McMullen

**TRANSCRIBER'S CERTIFICATE**

I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.

Date: 10-13-96

Joyce F. Boe  
Official Transcriber  
Heritage Reporting Corporation  
Joyce F. Boe

**PROOFREADER'S CERTIFICATE**

I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

Date: 10/17/96

Don R. Jennings  
Official Proofreader  
Heritage Reporting Corporation  
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